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July 19, 2001

By Hand

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996


Docket No. 97-00309

Dear Mr. Waddell:

Attached please find the original and thirteen copies of three filings in this proceeding. These filings are NOTICE OF HEARINGS IN OTHER STATES; COMMENTS ON THE FCC'S MARCH 23, PUBLIC NOTICE; AND COMMENTS CONCERNING BELL SOUTH'S PROPOSED SCHEDULE IN THIS PROCEEDING AND MOTION TO DISMISS BELL SOUTH'S PROPOSED 271 SCHEDULE AS PREMATURE.

If you have any questions, please call me.

Respectfully submitted,


Jim Lamoureux

Enclosures
cc: Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF HEARINGS IN OTHER STATES, COMMENTS ON THE FCC'S MARCH 23, PUBLIC NOTICE, AND COMMENTS CONCERNING BELL SOUTH'S PROPOSED SCHEDULE IN THIS PROCEEDING AND MOTION TO DISMISS BELL SOUTH'S PROPOSED 271 SCHEDULE AS PREMATURE** in Docket No. 97-00309 were served by U.S. mail on the following parties of record this 19th day of July 2001:

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James P. Lamoureux

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**
Nashville, Tennessee

In re:)	
BellSouth Telecommunications, Inc.'s)	
Entry Into Long Distance (InterLATA))	Docket No.: 97-00309
Service in Tennessee Pursuant to)	
Section 271 of the Telecommunications)	
Act of 1996)	

NOTICE OF HEARINGS IN OTHER STATES

Pursuant to the request of the Hearing Officer and the agreement of the parties at the July 12, 2001, Status Conference in this proceeding, the following is a list of hearing dates for 271 and 271-related hearings in other states in the BellSouth region just prior to the 271 hearing dates proposed by BellSouth for Tennessee in this proceeding. AT&T and BellSouth have conferred and have agreed on the accuracy of this list.

<u>DATE</u>	<u>STATE</u>	<u>DOCKET #</u>
Sept.24-28	Kentucky (Perf. Measures)	2001-105
Oct. 11-12 (Thurs/Fri)	Florida	960786-TL
Oct. 17-19 (Wed-Fri)	Florida	960786-TL
Oct. 22-26	Kentucky	2001-105
Oct. 29-Nov.2	North Carolina	P55, Sub1022

Respectfully submitted,

**AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC.**

By: Jim Lamoureux by permission
for

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Attorney for AT&T Communications of the
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Dated: July 19, 2001

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)
BellSouth Telecommunications, Inc.'s)
Entry Into Long Distance (InterLATA))
Service in Tennessee Pursuant to)
Section 271 of the Telecommunications)
Act of 1996)

Docket No.: 97-00309

COMMENTS ON THE FCC'S MARCH 23, 2001, PUBLIC NOTICE

During its July 12, 2001, status conference, the Hearing Officer in this proceeding requested comments from the parties regarding the Public Notice issued by the Federal Communications Commission ("FCC") on March 23, 2001, concerning filing requirements for Bell Operating Company ("BOC") applications under Section 271 of the Telecommunications Act of 1996 (the "Act").¹ AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc., Sprint Communications Company LP, MCI WorldCom Communications, Inc., MCI WorldCom Network Service, Inc., Brooks Fiber Communications of Tennessee, Inc., and MCI MCImetro Access Transmission Services, LLC (collectively, "Commenters")² hereby submit the following comments and recommend that the Authority adopt in this proceeding the fundamental principles underlying the FCC's filing requirements. Specifically, Commenters believe that the FCC's requirement that the record upon which a BOC relies be complete when filed is appropriate in this forum for the same reasons that the FCC adopted those principles: to

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 251 *et seq.*

² Sprint and WorldCom have given counsel for AT&T permission to sign this pleading on their behalf.

ensure that the TRA and third parties consider the same evidence and to avoid piecemeal development of the relevant record.

In its evaluation of a BOC's application under Section 271 of the Act, the FCC has stated that it "must be able to make a determination based on the evidence in the record that a BOC has actually demonstrated compliance with the requirements of section 271."³ To facilitate this determination and the development of a complete and full record, the FCC has attempted to deter incomplete and premature filings from the BOCs.⁴

To fulfill this objective, the FCC adopted its "complete when filed requirement." The FCC's complete when filed requirement mandates that "a section 271 application, **as originally filed**, will include **all of the factual evidence** on which the applicant would have the Commission rely in making its findings."⁵ The FCC reiterated its complete when filed requirement in its statement of filing requirements set forth in its March 23, 2001, Public Notice ("Public Notice"). In its *Public Notice*, the FCC made clear that after the initial application, a BOC may submit new evidence "solely to rebut arguments made or facts submitted by other

³ Memorandum Opinion and Order, *In the Matter of Application By Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 ¶ 37 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) ("*Bell Atlantic New York Order*").

⁴ See *Bell Atlantic New York Order* ¶ 35. Commenters also contend that consideration of BellSouth's Section 271 application would be premature at this time. See Comments Concerning BellSouth's Proposed Schedule for this Proceeding and Motion to Dismiss BellSouth's Proposed Section 271 Schedule As Premature, filed July 19, 2001.

⁵ Memorandum and Opinion, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, 12 FCC Rcd. 20,543 ¶ 49 (F.C.C. August 19, 1997) (No. CC97-137, FCC 97-298) ("*Ameritech Michigan Order*") (emphasis in original). See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA-01-734 (March 23, 2001) ("Public Notice").

commenters.”⁶ Moreover, such new evidence “may only cover the period placed in dispute by commenters and thus should not relate to performance after the filing of comments by third parties[.]”⁷ The FCC made clear that it has the same concern as the TRA and the parties in this proceeding: “it is highly disruptive to our processes to have a record that is constantly evolving.”⁸

The concerns the FCC expressed regarding developing a full and complete record for evaluating a BOC’s Section 271 application apply equally to this proceeding before the TRA. The need for efficient use of agency resources is just as important when the agency involved is an arm of a state, rather than federal, government. In addition, the principles of fairness that require that the agency and the interested parties receive a fair opportunity to review a full and complete record are just as compelling at the state level. Indeed, in its last order in this very proceeding, the TRA specifically directed that “when BellSouth chooses to refile its ninety (90) days’ advance notice with the Authority, it should file simultaneously therewith ***the filing that it will rely on before the FCC. This requirement is consistent with the FCC’s policy in this regard.***” Initial Order Accepting BellSouth Telecommunications, Inc.’s Notice of Voluntary Dismissal and Withdrawal, *In re: BellSouth Telecommunications, Inc.’s Entry Into Long Distance (interLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996* at 16 (June 1, 1999). By FCC, policy, the TRA referred specifically to the FCC’s complete when filed requirement. *Id* at n. 26.

⁶ Federal Communications Commission, *Public Notice* DA 01-734 at 3 (Mar. 23, 2001)(“Public Notice”).

⁷ *Public Notice* at 3.

⁸ *Public Notice* at 4.

Moreover, it appears that BellSouth has promised the TRA in this proceeding that BellSouth will abide by the principles underlying the FCC's complete when filed requirement. Indeed, BellSouth assured the Hearing Officer at the July 12th Status Conference that BellSouth's July 30th filing with the TRA will be "substantially the filing that we would intend to make at the FCC,"⁹ although BellSouth also acknowledged that there may be some "tweaking" of its application, as part of a "dynamic process."¹⁰

In reality, however, because of the manner and time in which BellSouth proposes to go forward with this case, BellSouth cannot fulfill its promise to the Hearing Officer and cannot comply with the underlying principles of the complete when filed requirement. The changes BellSouth will have to make to its FCC application after this proceeding will assuredly amount to more than mere "tweaking." For example, Commenters assume that BellSouth intends to use performance measures data in its Tennessee Section 271 application at the FCC, but the Authority's performance measures hearing is not scheduled until August 20th. Indeed, in its *Public Notice*, the FCC specifically stressed the importance of state specific performance measures and performance data in Section 271 applications.¹¹

Rather than wait to file its petition with the Authority until data collected under Tennessee performance measures are available for consideration in this proceeding, BellSouth proposes that the Authority adopt in this proceeding interim performance measures that

⁹ See Transcript of July 12 Status Conference, p. 10, lines 18-20.

¹⁰ See Transcript of July 12 Status Conference, p. 11, lines 17, 21.

¹¹ *Public Notice* at 5-6.

BellSouth says it will file with its Section 271 petition.¹² Then, once the Authority adopts a permanent set of performance measures after the August 20th hearing in the generic performance measures docket, “there would be a transition to those measures and data under those measures at that time.”¹³ BellSouth acknowledges that this would be “an evolving process.”¹⁴

Thus, by its own admission, BellSouth apparently has no intention of complying with the complete when filed requirement in this proceeding or abiding by its own promise to the Hearing Officer that its FCC submission will be substantially the same filing that BellSouth will present to the TRA on July 30th. Indeed, it is impossible for BellSouth to do so, unless BellSouth somehow knows for certain that the TRA will in the generic performance measures proceeding adopt the measures that BellSouth proposes there and that the data collected against those measures will be the same data that BellSouth intends to file in this docket on July 30th. In short, BellSouth has no way of knowing what its FCC filing will look like until the generic performance measures proceeding is concluded and sufficient data is collected pursuant to the measures adopted by the TRA in that proceeding. Moreover, in its FCC 271 application for Tennessee, BellSouth almost certainly will have to rely on performance data collected after the conclusion of this hearing, which would be a clear violation of the FCC’s complete when filed requirement if it were adopted by the TRA or if BellSouth followed the same course before the FCC.

¹² Transcript of July 12 Status Conference, p. 36, lines 11-17; p. 37, line 11.

¹³ Transcript of July 12 Status Conference, p. 37, lines 3-7.

¹⁴ Transcript of July 12 Status Conference, p. 36, line 25.

There simply is no way of knowing at this point in time just what measures and data BellSouth will submit to the FCC for its Tennessee application. BellSouth has placed the TRA in a classic Catch-22. The only way for BellSouth to uphold its promise to the Hearing Officer and to comply with the complete when filed requirement is to wait until the TRA establishes performance measures and sufficient data has been collected as to BellSouth's performance against those measures before BellSouth initiates a Section 271 proceeding before the TRA.¹⁵ Either BellSouth's promise to the Hearing Officer is a hollow one, or BellSouth must wait to proceed with this case until after the performance measures docket is concluded and data collected in order to live up to that promise.

In addition, the Authority has opened a docket to determine the areas of operational support systems ("OSS") testing in which reliance on existing data or test results from other states is not possible and to conduct required Tennessee-specific testing. The conclusions in that docket and the results of the Tennessee-specific third-party testing will not be available at the time BellSouth plans to file its initial Section 271 application. Again, short of knowing that the outcome of that proceeding will be that no Tennessee-specific third party testing is required, BellSouth cannot possibly live up to its promise to the Hearing Officer that its July 30th application will be substantially the same as what it intends to file at the FCC.

¹⁵ Moreover, proceeding now with a 271 case will result, in effect, in the TRA hearing two separate performance measures cases almost simultaneously. Indeed, BellSouth has suggested that the TRA use an interim set of measures for 271 purposes purportedly based on the Georgia order until the TRA adopts permanent performance measures. Thus, AT&T and other parties will be forced to raise concerns and file testimony against the interim measures in the Section 271 case and at the same time litigate the performance measures case, and the TRA will end up hearing arguments as to performance measures in both the Section 271 case and the performance measures case. Surely, that is not the sort of efficient process that is embodied in the complete when filed requirement and BellSouth's promise to the Hearing Officer.

If BellSouth is allowed to file its Section 271 application with the intent that it will “evolve,” the Authority and interested third-parties will be forced to do just what the FCC’s complete when filed rule is designed to prevent: chase a moving target. BellSouth should not be permitted to rush the Authority and interested third parties into an evaluation process in which it will be difficult to be certain of the content of BellSouth’s application at any given time. The Authority and third parties should not have to spend the time and resources required to monitor and review subsequent submissions and revisions to elements of BellSouth’s *prima facie* case.

The FCC implemented the complete when filed rule to prevent the disruptive effects of an evolving record. BellSouth has implicitly admitted its plan to submit an application that will evolve. The Authority should adopt the complete when filed rule to prevent the uncertainty,

inefficiency, and unfairness that would result. The Authority should require BellSouth to submit and defend a record that is substantially complete and definite.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim Lamoureux by plemin". The signature is written over a horizontal line.

Jim Lamoureux

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Attorney for AT&T Communications of the
South Central States, Inc. and TCG
MidSouth, Inc.

Dated: July 19, 2001

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
BellSouth Telecommunications, Inc.'s)	
Entry Into Long Distance (InterLATA))	Docket No.: 97-00309
Service in Tennessee Pursuant to)	
Section 271 of the Telecommunications)	
Act of 1996)	

**COMMENTS CONCERNING BELL SOUTH'S PROPOSED SCHEDULE FOR THIS
PROCEEDING AND MOTION TO DISMISS BELL SOUTH'S
PROPOSED SECTION 271 SCHEDULE AS PREMATURE**

AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc., Sprint Communications Company LP, MCI WorldCom Communications, Inc., MCI WorldCom Network Service, Inc., Brooks Fiber Communications of Tennessee, Inc., and MCI MCImetro Access Transmission Services, LLC (collectively, "Commenters")¹ move to dismiss BellSouth's proposed Section 271 schedule as premature. As discussed in greater detail below, holding a Section 271 hearing starting on November 5, 2001, is premature for several reasons:

- The TRA cannot fully evaluate BellSouth's checklist compliance until the generic performance measures docket is complete and sufficient data has been collected. Performance measures and performance data are critical to determining whether BellSouth satisfies the Section 271 checklist. The TRA currently is in the process of conducting its generic performance measurement docket and will conduct the hearing in the docket in mid-August. Moreover, BellSouth has not yet provided the TRA any performance measurements data. Completion of the generic performance measures docket along with a thorough review of at least three months of BellSouth's performance measures data associated with the Service Quality Measurement ("SQM") the TRA will order is essential to accurately determine whether BellSouth can establish checklist compliance.

¹ Sprint and WorldCom have given counsel for AT&T permission to sign this pleading on their behalf.

- The TRA cannot properly evaluate the adequacy of BellSouth's OSS until the third-party review ordered in Docket No. 01-00362 is complete. The results of this review will give the TRA valuable information necessary to evaluate whether BellSouth provides nondiscriminatory access to its OSS. The stated purpose of this review is "to determine the areas of OSS testing in which reliance on existing data or the test results from other states is not possible and to conduct any required testing."² Moving ahead with a section 271 hearing prior to completion of this review and associated testing means that the TRA will not have information that it has already determined it needs to evaluate whether BellSouth is providing nondiscriminatory access to its OSS as required by state and federal law.

Going forward with Section 271 proceedings now, before the generic dockets are complete, is premature. The primary purpose of these generic dockets is to identify and then obtain the appropriate performance data and test results to determine BellSouth's compliance with state and federal requirements, including Section 271. As BellSouth's counsel admits, the performance measures and OSS dockets are intertwined with Section 271 proceedings, and the timing of all of these dockets must be kept "in synch."³ Moving ahead with Section 271 hearings prior to the completion of the generic dockets would have the practical effect of preventing the TRA from using the information it has already concluded would be necessary to conduct a reasoned evaluation of BellSouth's compliance with Section 271.

² Order Consolidating Docket Nos. 99-00347 and 00-392 Into Docket No. 01-00193 and Opening Docket No. 01-362, Tennessee Regulatory Authority (May 15, 2001) at 8.

³ July 12 Hearing Transcript at 35:10-14.

I. THE TRA CANNOT FULLY EVALUATE BELL SOUTH'S CHECKLIST COMPLIANCE UNTIL THE PERFORMANCE MEASURES DOCKET IS COMPLETED

Performance measures provide a means to evaluate quantitatively the quality of service Incumbent Local Exchange Carriers ("ILECs") offer to Competitive Local Exchange Carriers ("CLECs"). Early in the process of implementing the Telecommunications Act of 1996 ("Act"), the FCC emphasized that ILECs' nondiscriminatory support of CLECs is critical to the ultimate development of local competition. (*See* First Report and Order, *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 ¶315 (rel. August 8, 1996) ("*Local Competition First Report and Order*").) Whether entering the local market via interconnection, resale, or the use of unbundled network elements, CLECs depend upon BellSouth's performance in providing service to their customers.

Performance measures are important because they provide a means of monitoring and evaluating BellSouth's provision of service to CLECs. Indeed, the TRA has found:

[T]he adoption of an ongoing performance measurement program with built-in enforcement mechanisms would provide the Authority with a tool to assure that BellSouth was offering nondiscriminatory access to its network in a competitively neutral manner.

(Order Consolidating Docket Nos. 99-00347 and 00-00392 Into Docket No. 01-00193 and Opening Docket No. 01-00362, Tennessee Regulatory Authority ("*Tennessee Procedural Order*") (May 15, 2001).) The FCC, moreover, has uniformly held that state-specific performance data is the best evidence for evaluating compliance with the requirements of Section 271.

In recognition of the importance of state-specific performance data, the TRA opened Docket No. 01-00193 on May 15, 2001, for the purpose of “establishing generic performance measurements, benchmarks and enforcement mechanisms for BellSouth.” (Tennessee Procedural Order at 8.) In the generic performance measures docket, the TRA will decide which measures it will implement, the standards by which the TRA will judge BellSouth’s performance for those measures, the proper level of disaggregation of data, and a penalty plan to remedy BellSouth’s deficient performance. All of these decisions have significant impact on what data BellSouth will be required to report to the TRA and to CLECs. Only after the performance measures docket is complete and BellSouth provides accurate Tennessee-specific data associated with the performance measures the TRA will adopt, can the TRA and CLECs evaluate whether BellSouth is providing nondiscriminatory access to local services. A hearing in that docket is scheduled for August 20, 2001.

To establish compliance with the Section 271 checklist, BellSouth will be required to fully and accurately report its performance via Tennessee-specific performance data in accordance with Tennessee-specific performance measures and standards. Indeed, it is those standards, not the standards adopted by the Georgia Commission, by which BellSouth’s performance will be judged going forward by the TRA and the FCC. For its part, the FCC has stated,

We recognize that metric definitions and incumbent LEC operating systems will likely vary among states, and that individual states may set standards at a particular level that would not apply in other states and that may constitute more or less than the checklist requires. Therefore, in evaluating checklist compliance in each application, we consider the BOC’s performance within the context of each respective state. For example, where a state develops a performance benchmark with input from affected competitors and the BOC, such a standard may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete. . . .[I]n making our evaluation we will

examine whether the state commission has adopted a retail analogue or a benchmark to measure BOC performance and then **review the particular level of performance the state has required.**⁴

When it established the generic dockets, the TRA recognized that blindly relying on BellSouth performance data reported under the Georgia performance measures against Georgia performance standards presents a host of questions and problems. In its haste to obtain Section 271 approval, however, BellSouth is asking the TRA to evaluate its performance pursuant to BellSouth's Georgia SQM.⁵ If the TRA were to proceed prior to completing its generic dockets, the TRA would be in the awkward and inefficient position of resolving disputes related to the Georgia Public Service Commission's Order.⁶ These disputes involve BellSouth's compliance with the letter and intent of the Georgia Public Service Commission's Order, as well as the reliability of BellSouth's reported data in terms of accuracy and completeness. Indeed, the overall integrity of BellSouth's performance reporting and data is in question. Since much of the work that will be accomplished in the generic dockets will address the integrity of BellSouth's performance reporting and data, it would be extremely inefficient for the TRA to address similar issues in the context of a Section 271 hearing prior to the completion of those generic dockets.

In short, the TRA should establish measures and standards by which BellSouth's performance will be judged before evaluating BellSouth's compliance with Section 271. The

⁴ See, e.g., Memorandum Opinion and Order, *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a SouthWestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLata Services in Texas*, 15 FCC Rcd. 18,354 ¶¶ 55-56 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("SWBT Texas Order") (emphasis added).)

⁵ See Hearing Transcript at 36:13-20.

⁶ See Georgia Public Service Commission Order on Supplemental Test Plan, *In re: Investigation into Development of Electronic Interfaces for BellSouth's Operational Support System*, Dckt. No. 8354-U, (January 12, 2000).

North Carolina Utilities Commission (“NCUC”) has embraced this approach and has determined it will conclude its pending performance measures docket before holding any hearing on BellSouth’s Section 271 compliance. (*See Order Setting Hearing and Procedural Schedule*, Docket Nos. P-55, Sub 1022 (May 9, 2001).)

II. THE STATUS OF THE THIRD-PARTY OSS TESTING DEMONSTRATES BELL SOUTH’S SECTION 271 PROCEEDINGS ARE PREMATURE

Both the TRA and the FCC have recognized that nondiscriminatory access to OSS functions is a fundamental part of the evaluation of all of the § 271 checklist items.⁷ This is due, in part, to the fact that nondiscriminatory access to BellSouth’s OSS is essential to CLECs’ ability to compete effectively in the local exchange market. Complete results of comprehensive third-party testing will be extremely useful to the TRA’s ability to determine whether BellSouth provides nondiscriminatory access to its OSS as required by the Telecommunications Act of 1996. Without such data, the TRA cannot determine whether BellSouth complies with the requirements of the Act. Accordingly, the TRA should complete its proceedings in its generic OSS docket prior to addressing BellSouth’s checklist compliance.

The TRA has ordered an independent third-party review “to analyze the existing data and test results from other states and to determine whether the data demonstrate compliance with the standard performance measurements and whether the test results are applicable to Tennessee.”

⁷ See Memorandum Opinion and Order, *In the Matter of Application By Bell Atlantic New York for Authorization under § 271 of the Communication Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (F.C.C. Dec. 22, 1999) (No. CC99-295, FCC 99-404) (“*Bell Atlantic New York Order*”); see also Memorandum Opinion and Order, *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a SouthWestern Bell Long Distance Pursuant to § 271 of the Telecommunications Act of 1996 to Provide In-Region InterLata Services in Texas*, 15 FCC Rcd. 18,354 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) (“*SWBT Texas Order*”). See also Tennessee Procedural Order at 2-3.

(May 15, 2001 Order at 8.) Completion of this third party review is necessary for the TRA to accurately evaluate BellSouth's checklist compliance in Tennessee because that review will help determine the extent to which it should rely on existing data and test results as being indicative of BellSouth's performance in Tennessee, or conduct additional testing.

At least one part of this independent third-party review cannot reasonably begin until after the TRA completes its generic performance measurements docket. Indeed, the TRA recently advised the prospective independent third party that "[s]ince the Authority is in the process of establishing generic performance standards, benchmarks, and enforcement mechanisms, it would be premature to conduct such an audit at this time." TRA letter to KPMG Consulting dated July 3, 2001. The third party review, moreover, requires review of the Georgia and Florida third party tests, both of which are incomplete at this time.

Moreover, although BellSouth has indicated it will rely on the Georgia third-party test to support its Tennessee Section 271 case, such reliance is inappropriate at this time. (*See* Hearing Transcript at 36.) The Georgia Commission has not made any final determination regarding whether BellSouth provides nondiscriminatory access to its OSS. Instead, the Georgia Commission recently delayed its Section 271 proceedings by extending the time in which reply testimony in the Section 271 docket must be filed because of lack of performance data that must be provided by BellSouth. These comments were just filed on July 16, 2001.⁸

Additionally, KPMG Consulting, Inc. ("KCI") cannot yet complete a full evaluation of BellSouth's OSS in Georgia because key testing areas are incomplete. For example, KCI has not

⁸ *See* Decision of the Georgia Public Service Commission, Administrative session, Docket No. 6863 (June 11, 2001). The date for comments was delayed because disaggregated data in accordance with the Commission's order would not be available until June 30.

been able to complete its evaluation of the adequacy of BellSouth's data collection and reporting processes⁹ and has not completed a second audit regarding three months of BellSouth's performance measures data the Georgia Commission ordered. This "second audit" is separate and apart from the "metrics evaluation" by KCI. Indeed, KCI is only beginning this second audit and has not yet established a project plan for conducting the audit.

The Florida third-party test also is on-going and KCI has just announced that it does not expect to complete its OSS testing until early October. Previously, the Florida test was scheduled to be completed in August. The Florida test is uncovering exceptions in areas not tested in the Georgia test and exceptions in areas in which KCI closed exceptions in Georgia. KCI has also identified observations and exceptions related to billing in areas KCI had deemed resolved in Georgia. To date, there is one open observation and nine open exceptions in this important area. Currently, overall, approximately 56 exceptions remain open in Florida's third-party test.

In short given the current status of TRA's independent third party review and the third party tests in Georgia and Florida, proceeding with a Section 271 proceeding at this time remains premature. Completion of the independent third party review is critical to the TRA's ability to conduct a reasoned evaluation of BellSouth's compliance with Section 271. Without such review, the TRA will not have the proper basis to determine the weight, if any, that should be

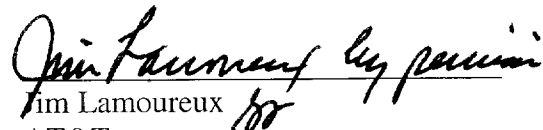
⁹ Furthermore an additional hearing is planned in Georgia to explore the results of this evaluation, but the Georgia Commission has not set a date for this hearing. Under the current schedule, the metrics hearing will occur thirty (30) days after KCI files its Supplemental Third Party Metrics Evaluation with the Georgia Commission but the date of expected completion of this work by KCI is unknown. *See* Second Procedural and Scheduling Order, *In re: Investigation into Development of Electronic Interfaces for BellSouth's Operational Support Systems*, Docket No. 8354-U (April 5, 2001).

afforded existing performance data and test results, which BellSouth has stated will be part of its application.

III. CONCLUSION

For the foregoing reasons Commenters urge the TRA deny BellSouth's untimely rush to obtain 271 review. State-specific performance measures data and evidence of nondiscriminatory access to OSS are integral parts of most of the Section 271 checklist items. Any Section 271 determination made by the TRA prior to establishing Tennessee-specific performance measures and implementing a remedy plan, and to receipt of the final results from the TRA ordered independent review of third-party testing in Georgia and Florida (and any additional Tennessee specific testing required) would be premature. Only after these critical issues are decided will the TRA have the evidence necessary to evaluate whether BellSouth complies with Section 271.

Respectfully submitted,


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Dated: July 19, 2001